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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,971	10/28/2003	Nathaniel Kolmes	244413US23	5774
22850 7590 02/03/2009 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
HURLEY, SHAUN R				
ART UNIT		PAPER NUMBER		
3765				
NOTIFICATION DATE		DELIVERY MODE		
02/03/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
oblonpat@oblon.com  
jgardner@oblon.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte*: NATHANIEL KOLMES

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Application No. 10/693,971  
Technology Center 3700

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Mailed: February 2, 2009

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Before KAREN SWEENEY, *Paralegal Specialist*.  
SWEENEY, *Paralegal Specialist*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on July 29, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

**APPEAL BRIEF, GROUNDS OF REJECTION**

A review of the file finds that the grounds of rejection of the claims as provided in the Appeal Brief filed March 14, 2007 under the heading “Grounds of rejection to be reviewed on appeal” is unclear and/or is not consistent with the grounds of rejection of claims of record. The grounds of rejection of the claims as provided in the Appeal Brief must be consistent with the last Office action of record, including any Advisory action responsive to any after final submissions. Each Grounds of rejection to be reviewed on appeal must be identified.

A review of the last Office action, including any mailed Advisory Action(s) finds that claims 1 and 14 are rejected under 35 U.S.C. § 112; whereas Appellant has either not indicated the grounds of rejection of these claims or has improperly listed these claims as 1-28 stand rejected under 35 U.S.C. § 103(a), first paragraph provided by Appellant. Correction of the Grounds of rejection to be reviewed on appeal for all claims is required.

**INFORMATION DISCLOSURE STATEMENT**

Appellant filed an Information Disclosure Statement (IDS) dated September 3, 2008. There is no indication on the record that the Examiner

has considered the above Information Disclosure Statement. MPEP § 609 requires the Examiner to consider any Information Disclosure Statement filed by Applicant if timely submitted. A written communication notifying Appellant of the Examiner's consideration of the above Information Disclosure Statement is required.

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Accordingly, it is ORDERED that the application is returned to the Examiner:

- 1) to hold the Appeal Brief filed on March 14, 2007 defective;
- 2) notify Appellant to file a paper properly addressing the Grounds of rejection of all claims; and
- 3) consider the Information Disclosure Statement filed September 3, 2008;
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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